

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs, April 2, 2007

**STATE OF TENNESSEE ON RELATION OF: CARRIE ROBERTS v. TOM  
WALL SHERIFF OF DICKSON COUNTY and JEFFREY A. WHITE**

**Direct Appeal from the Circuit Court for Dickson County  
No. CR7998     Hon. George Sexton, Circuit Judge**

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**No. M2006-00363-COA-R3-CV - Filed on May 22, 2007**

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The Trial Court granted petitioner a Writ of Habeas Corpus and ordered her release from custody. A Tennessee Juvenile Court has found petitioner in contempt of court and incarcerated her for failing to obey the Tennessee Court's Order which had changed the custody of her child to the father. Previously to the Tennessee Order a State of Maine Court had awarded the petitioner custody of the child. On appeal, we affirm the Trial Court's grant of the Writ.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

J. Reese Holley, and Eric Thornton, Dickson, Tennessee, for Appellants.

Kenneth Quillen, Nashville, Tennessee, for Appellee.

**OPINION**

Carrie Roberts, filed a Petition for Writ of Habeas Corpus in the Circuit Court of Dickson County, on October 26, 2005, naming Tom Wall, Sheriff of Dickson County, as the respondent. She alleged in her Petition that she was a citizen of the State of Maine, and was being

illegally restrained in the Sheriff's custody in Dickson County.

She alleged that she was previously married to Jeffrey White, a resident of Dickson County, and that she and White had a child together, whose name is Andrew Roberts-White, d.o.b. 5/21/01. She further alleged that they were divorced in Michigan, and that jurisdiction was later vested in Maine, and that she had brought the child to Dickson to see his father, pursuant to the orders of the Maine court, and when she came to Tennessee, she was confronted with an Order of the Juvenile Court of Dickson County, entitled "Emergency Temporary Care and Custody", the Order having been signed by Judge Moore, after Judge Jackson recused himself. She further alleged that a hearing was scheduled for June 21, 2005, and that an Order was entered on June 22, 2005 awarding custody to White. She admitted that on June 21, 2005, after the hearing but before the Order was entered, she returned to Maine with the child, pursuant to the Maine court order.

She further alleged that she was arrested on an extradition warrant in Maine, but that Tennessee authorities failed to pick her up within ten days, and that on August 29, 2005, she was indicted or presented by a Dickson County Grand Jury with custodial interference, and that her bond was set at \$27,000.00.

She alleged that she retained an attorney, and was in the process of making arrangements to surrender when she was taken into custody by the U.S. Marshals on October 19, 2005, and taken to the Dickson County Jail. She further averred that she had made bond on the criminal charge, but was detained pursuant to a civil contempt Order signed by Judge Moore, which stated that Roberts would be "incarcerated until such time as she purges herself from this civil contempt by producing the minor child". Further, that she was unable to take her child from Maine to Tennessee without violating the Orders of the Maine Court, and that the Tennessee Juvenile Court had unlawfully failed to give full faith and credit to the Maine Court's Orders. She further alleged that the Maine District Court conducted a further hearing, wherein the Court found that Maine had jurisdiction of the matter and reiterated that the parties would not remove the child from the State of Maine "without prior written approval of the other parent or this Court."

The Dickson County Circuit Court held a hearing on the Petition for Writ of Habeas Corpus on October 24, 2005, and Roberts testified substantially in accordance with the allegations in her Petition.

At the conclusion of the hearing, the Trial Court noted from the bench that this was the type of situation that the UCCJEA was enacted to avoid,<sup>1</sup> and that it was not fair to have Roberts sit in jail until the situation regarding the competing orders was resolved. The Court stated that pursuant to Tenn. Code Ann. §29-21-123, the Court could hold her on bail until the matter was

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<sup>1</sup>The Maine Court in holding that it had jurisdiction in the matter, stated in its Order that the Maine District Court had attempted to communicate with the Tennessee Juvenile Judge to resolve the matter, but that Judge Moore stated that Tennessee had jurisdiction and terminated the conversation before any further issues could be discussed.

resolved, but stated that it would release Roberts on her bond on the criminal charges, which would also cover the charge of civil contempt, until the matter could be resolved.

The Circuit Court entered an Order on November 7, 2005, finding that Roberts had been held in the Dickson County Jail since October 20, 2005, pursuant to the Contempt Order.

The Court held that Roberts could not comply with the Tennessee Order without violating the Maine Order, and found that Roberts had been indicted or presented by the Grand Jury for Dickson County, on a charge of custodial interference, and was under a \$27,000.00 bond. The Court ordered Roberts to be immediately released on the bond.

The final Order was entered, and the Court also held that White was allowed to intervene in the writ hearing and Order for the purpose of protecting any rights that he may have in the proceeding. Sheriff Wall and White jointly filed a Notice of Appeal.

The issues presented on appeal are:

1. Whether Roberts should have been released on bail pursuant to a Writ of Habeas Corpus?
2. Whether the Court erred in finding that Roberts would be in violation of the Maine Order if she followed the Order entered by the Tennessee Juvenile Court?

Appellants argue that Roberts should not have been released from custody, because there was no showing that the judgment of the Juvenile Court was void. While it is true the Circuit Court did not explicitly make such a finding, this issue was not raised at the trial court level. Appellants never argued in the trial court that the Writ of Habeas Corpus was an improper means of seeking Roberts' release. It is well-settled that issues not raised in the trial court generally cannot be raised for the first time on appeal. *Simpson v. Frontier Community Credit Union*, 810 S.W.2d 147 (Tenn. 1991).

This issue would be without merit in any event, as our Supreme Court has explained:

we are reviewing a petition for habeas corpus relief and whether to grant the petition is a question of law that we review *de novo*. We are guided by the overarching rule that habeas corpus relief is available to a defendant only when the judgment is void on its face or the prisoner's sentence has expired. See *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). "A void judgment is one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment." *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998).

*Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). In *Dykes*, the Supreme Court stated, "if the face

of the record shows that the court did not have jurisdiction, then the judgment is void.” *Id.* at 529.

In this case, the Tennessee Juvenile Court did not have jurisdiction of this action pursuant to the terms of the Uniform Child Custody Jurisdiction and Enforcement Act, which states:

Except as otherwise provided in § 36-6-219, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 36-6-216(a)(1) or (2), and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under § 36-6-217 or that a court of this state would be a more convenient forum under § 36-6-221; or

(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Tenn. Code Ann. §36-6-218.<sup>2</sup>

Tennessee had no jurisdiction to make an initial custody determination, because Tennessee has not been the child’s home state. *See* Tenn. Code Ann. §36-6-216. Moreover, there was already custody litigation pending in Maine, and Maine had clearly not determined that it no longer had jurisdiction nor that Tennessee was a more convenient forum. Roberts and the child resided in Maine, and had only traveled to Tennessee to allow visitation pursuant to the Maine parental rights order. This record establishes that Maine had jurisdiction over the custody of the child, and the Tennessee Juvenile Court did not. As such, the Juvenile Court had no authority to modify the Maine decree, nor to order Roberts to return the child to Tennessee. We hold the Tennessee judgment was void, and Roberts’ Petition was properly granted.

Appellants also argue that it was improper for the Trial Court to consider the Maine Orders, since they allege that the documents that were introduced at trial were not properly certified. The Orders that counsel agreed to supply have now been filed in the record. Thus, this issue is without merit.

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<sup>2</sup> Tenn. Code Ann. §36-6-219 is an exception to the general jurisdictional provisions, which allows Tennessee to assume “temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” There is nothing in this record to show that such was the situation here.

For the foregoing reasons, we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed jointly to Tom Wall and Jeffrey A. White.

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HERSCHEL PICKENS FRANKS, P.J.